

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

LOUIS J. CRISCITELLI and	:	
CHARLENE R. CRISCITELLI,	:	
Plaintiffs	:	
	:	
	:	
v.	:	Civil Action No.
	:	3:03 CV 1522 (CFD)
PROLINE BOATS, DONZI BOATS D/B/A	:	
PROLINE BOATS, AND ISLANDER	:	
BOAT CENTER,	:	
Defendants.		

**RULING ON MOTION TO DISMISS**

The plaintiffs Louis J. Criscitelli and Charlene R. Criscitelli (“Criscitellis”) brought this action against defendants Proline Boats (“Proline”), Donzi Boats d/b/a Proline Boats (“Donzi”), and Islander Boat Center alleging claims of breach of contract, defective design and manufacture, breach of the implied duty of good faith and fair dealing, and unfair trade practices. Pending is defendant Islander Boat Center’s Motion to Dismiss [Doc. #8] for lack of personal jurisdiction under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

**I. Facts<sup>1</sup>**

The Criscitellis purchased the "Blue Moon", a Proline 3310 Express offshore fishing boat, for \$214,449.88 on September 7, 2001. The boat was manufactured by Proline and Donzi and sold by

---

<sup>1</sup>The facts are taken from the plaintiffs’ complaint unless otherwise indicated. Jurisdiction is invoked on the basis of diversity of citizenship under 28 U.S.C. § 1332 and admiralty under 28 U.S.C. § 1333.

their authorized dealer, Islander Boat Center.<sup>2</sup> The boat had chronic hull leaks and a number of other problems. The Criscitellis allege that the defendants made several attempts to repair the defects in the boat, but their efforts have been unsuccessful. The Criscitellis claim that the boat remains unseaworthy and unsafe, and, as a result, they have been unable to use the boat since taking delivery in September 2001.

The Criscitellis, residents of Enfield, Connecticut, allege in their complaint that Islander Boat Center ("Islander"), with its place of business in Port Jefferson, New York, marketed and sold boats to customers throughout the eastern United States. They further allege that they purchased the boat based on the representations, sales solicitations, and other information disseminated by the defendants in the state of Connecticut and nationwide through their print and on-line advertisements, boat show presentation and other media. In addition, they state that when they arrived at Lindhurst, New York to take delivery of the boat from Islander and discovered the leaks, Proline's factory representative and representatives of Islander promised to fix the problems when the boat arrived in Connecticut. The Criscitellis also allege that between the fall of 2001 and the spring of 2003, the defendants made attempts to repair the boat at a marina in Westbrook, Connecticut, among other places.

The plaintiffs have also submitted an affidavit of Louis Criscitelli, dated January 12, 2004, attached to their Memorandum of Law in Opposition to Motion to Dismiss [Doc. #17]. In the affidavit, Louis Criscitelli confirms the allegations in the complaint and states that although his first contact with Islander was at the New York Boat Show, he received numerous subsequent communications from

---

<sup>2</sup>Proline and Donzi have not moved to dismiss.

Islander's sales agents to his Connecticut home concerning matching any price for a similar boat by Connecticut Proline dealers. He also states that after the Criscitellis agreed to purchase the boat, there were many other contacts between the plaintiffs and Islander concerning the "fitting out" of the boat before the sale was "finally consummated." Louis Criscitelli also stated in his affidavit that Islander representatives came to Connecticut to attempt to repair the boat's problems. If Mr. Criscitelli's affidavit is credited, it is clear that Islander knew that the Criscitellis resided in Connecticut and would be using the boat on Long Island Sound and the coastal Atlantic area.

## **II. Motion to Dismiss Standard**

When a defendant challenges personal jurisdiction in a motion to dismiss, the plaintiff bears the burden of proving that the court has jurisdiction over the defendant. See Amerbelle Corp. v. Hommell, 272 F. Supp. 2d 189, 192 (D. Conn. 2003); see also Metro. Life Ins. v. Robertson-Ceco Corp., 84 F.3d 560, 566-67 (2d Cir. 1996); Ensign-Bickford Co. v. ICI Explosives USA, Inc., 817 F. Supp. 1018, 1026 (D. Conn. 1993). When no discovery has been conducted, the plaintiff only needs to assert facts constituting a prima facie showing that the defendant's conduct was sufficient for the court to exercise personal jurisdiction. See Amerbelle, 272 F. Supp. 2d at 192-93 (citations omitted). In ruling, the court must resolve all doubts in favor of the plaintiff, regardless of controverting evidence submitted by the defendant. See United States Surgical Corp. v. Imagyn Med. Tech., Inc., 25 F. Supp. 2d 40, 44 (D. Conn. 1998).

The court has personal jurisdiction if the defendant's conduct satisfies the requirements of (1) the Connecticut long-arm statute; and (2) the Due Process Clause of the Fourteenth Amendment. Ensign-Bickford, 817 F. Supp. at 1026. Connecticut's long-arm statute applicable to corporations

provides for personal jurisdiction for causes of action arising as follows:

(1) Out of any contract made in this state or to be performed in this state; (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

Conn Gen. Stat. § 33-929(f). If the defendant's conduct satisfies the requirements of the long-arm statute, then the court must determine whether the conduct satisfies the due process prong of the test.

The two components of the due process prong are: (1) the "minimum contacts" analysis and (2) the "reasonableness analysis." Amerbelle, 272 F. Supp. 2d at 196 (citing Metro. Life Ins., 84 F.3d at 567). "Minimum contacts" are established when a defendant "purposely avail[s] himself of the privileges and benefits" of the forum state. Hanson v. Denckla, 357 U.S. 235, 253 (1958); see also United States Surgical Corp., 25 F. Supp. 2d at 44-45. The second component inquires into whether the defendant's "conduct and connection with the forum [s]tate [should be] such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). This inquiry is tied to whether "the assertion of personal jurisdiction comports with 'traditional notions of fair play and substantial justice.'" Amerbelle, 272 F. Supp. 2d at 196 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

The Criscitellis have presented facts sufficient to support a prima facie showing that this Court may exercise personal jurisdiction over Islander.<sup>3</sup> Section 33-929(f)(3) provides for personal jurisdiction for a cause of action arising out of the distribution of goods by a corporation with the reasonable expectation that the goods are to be used in Connecticut and are used in Connecticut. The Criscitellis have presented facts that show that Islander was well aware that the Criscitellis resided in Connecticut and planned to use the boat from Connecticut on Long Island Sound and the coastal Atlantic area. Accordingly, Islander's conduct satisfies the requirements of the long-arm statute as set forth in § 33-929(f)(3).

In addition, Islander's conduct satisfies the due process prong of the test. The Criscitellis have presented evidence that Islander knew they resided in Connecticut and would keep the boat there, solicited them in Connecticut, and that Islander representatives came to Connecticut to attend to and examine the boat. While Islander disputes these claims through two affidavits of John Scoglio, CEO and President of Islander, the plaintiffs have satisfied their burden. The facts presented by the Criscitellis show that the minimum contacts and reasonableness tests of the due process prong are met. Accordingly, the Criscitellis have alleged facts sufficient to make a prima facie showing that Islander's conduct was sufficient for the Court to exercise personal jurisdiction.

---

<sup>3</sup>The parties agree that no discovery has been conducted. However, the Court has considered the allegations of the complaint as well as the other materials submitted by the parties, including the two affidavits of Mr. Scoglio. Because the additional materials have been submitted but no evidentiary hearing has been conducted, the Court has applied the requirement that the prima facie showing be "factually supported". Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d. Cir. 1990).

**III. Conclusion**

For the foregoing reasons, Defendant's Motion to Dismiss [Doc. #8] is DENIED.

SO ORDERED this 31<sup>st</sup> day of August 2004, at Hartford, Connecticut.

/s/ CFD

**CHRISTOPHER F. DRONEY**  
**UNITED STATES DISTRICT JUDGE**